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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2009-178

**ELAINE M. YARNELL, a.k.a.,
ELAINE YARNELL, a.k.a.,
ELAINE JANETTE YARNELL,**
1517 East Paradise Avenue
Visalia, CA 93292

ACCUSATION

Registered Nurse License No. 525247

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about August 14, 1996, the Board of Registered Nursing issued Registered Nurse License No. 525247 to Elaine M. YARNELL, also known as Elaine Yarnell, and Elaine Janette Yarnell ("Respondent"). The license will expire on or about August 31, 2010, if not renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

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1 23152(a). Among other things, Respondent was sentenced to: 60 months summary probation;
2 serve time in county jail; pay fines; restricted drivers license to and from work for one year; not
3 drive a vehicle with any measurable amount of alcohol in her blood; and, not refuse a blood,
4 breath, or urine test.

5 The underlying circumstances are: On October 30, 2006, Respondent drove a
6 motor vehicle while under the influence of alcohol when she collided with a vehicle at Ben
7 Maddox and Noble Streets in Visalia, California. Respondent's breath test at the scene by a
8 Preliminary Alcohol Screening device was .18%. Respondent refused to submit to a blood test at
9 the hospital and a non-consensual test was taken.

10 c. On April 24, 2002, in the Superior Court, County of Tulare, Division of
11 Visalia, in the case titled *People of the State of California v. Elaine Janette Yarnell* (Super. Ct.,
12 Tulare Cty., Visalia Div., 2002, Case No. CR-TR-01-0073279-1), Respondent was convicted by
13 the Court on her plea of *nolo contendere* of violating VC section 23152, subdivision (a) [driving
14 under the influence of alcohol], a misdemeanor. Among other things, Respondent was sentenced
15 to: 36 months summary probation; serve time in county jail; pay fines; complete a drunk driving
16 program; restricted drivers license for three months to and from work, the program, and her son's
17 school; not drive a vehicle with any measurable amount of alcohol in her blood; and not refuse a
18 blood, breath or urine test

19 The underlying circumstances are: On March 19, 2001, Respondent drove a
20 motor vehicle while under the influence of alcohol when she collided with a large tractor trailer
21 truck at Mineral King and Santa Fe Streets in Visalia, California, wrecking her vehicle. Respon-
22 dent failed the sobriety tests administered at the scene. Respondent's breath test at the scene by a
23 Preliminary Alcohol Screening device was .117%. Respondent told the arresting office that she
24 had been driving to work at the local hospital when the accident occurred.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Use of Alcohol - Danger to Self or Others)

27 9. Respondent's registered nurse license is subject to disciplinary action
28 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined

1 in Code section 2762, subdivision (b), in that on or about March 19, 2001, and October 30, 2006,
2 Respondent used alcoholic beverages in a manner dangerous or injurious to herself, others, or the
3 public, as more fully set forth in paragraph 8, subparagraphs b, and c, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Conviction of Criminal Offense Involving Alcohol)

6 10. Respondent's registered nurse license is subject to disciplinary action
7 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in
8 Code section Code section 2762, subdivision (c), in that Respondent was convicted of crimes
9 involving alcohol, as more fully set forth in paragraph 8, subparagraphs b, and c, above.

10 **PRAYER**

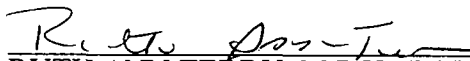
11 **WHEREFORE**, Complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nurse License No. 525247, issued to
14 Elaine M. Yarnell, also known as Elaine Yarnell, and Elaine Janette Yarnell;

15 2. Ordering Elaine M. Yarnell, also known as Elaine Yarnell, and Elaine
16 Janette Yarnell, to pay the Board of Registered Nursing the reasonable costs of the investigation
17 and enforcement of this case, pursuant to Code section 125.3; and,

18 3. Taking such other and further action as deemed necessary and proper.
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20 DATED: 2/23/09

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22 RUTH ANN TERRY, M.P.H., R.N.
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
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